



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
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Portland, Oregon 97232

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BIA.PN.1594

MEMORANDUM

TO: Assistant Area Director, Program Services, BIA
ATTN: Area Social Worker

FROM: Office of the Regional Solicitor

SUBJECT: Congressional Inquiry About P.L. 99-570

In a memorandum dated June 20, 1988, we declined to offer an opinion concerning section 4227 of Public Law 99-570, The Anti-Drug Abuse Act, because the section apparently dealt with action to be taken by the Secretary of Health and Human Services. Subsequent to our memorandum, we were informed by the Area Social Worker that notwithstanding the language in the Act, BIA was administering the money authorized for appropriation in section 4227. Consequently, we will now provide you with our opinion.

As we stated in our earlier memorandum, section 4227 is titled "Indian Health Service Youth Program." Subsection (b) authorizes to be appropriated "\$6,000,000 for the construction and renovation of the regional youth treatment centers." The section requires that a youth treatment center be established in each area under the jurisdiction of an Indian Health Service area office. The Grand Ronde Tribe inquired through Senator Hatfield's office about whether a "purchase" of an existing treatment facility would fall within the language "construct and renovate" in section 4227(b). We believe that the intent of section 4227(b) is to establish youth treatment centers. There appears to be no reason why an existing treatment center could not be purchased if it would fulfill the intent of the legislation. It would certainly be difficult to "renovate" a facility without first acquiring an interest in it. We conclude that the money authorized to be appropriated in section 4227(b) could lawfully be used to purchase a facility to become a youth regional treatment center.

For the Regional Solicitor

Colleen Kelley

Colleen Kelley
Attorney
Pacific Northwest Region



May 18, 1987

MEMORANDUM

TO: Dr. Everett R. Rhoades
Director, Indian Health Service
Public Health Service

FROM: Chief, Business Law Branch
Business and Administrative Law Division

SUBJECT: Leasing of Space for Drug Treatment Centers --
Request for Opinion, 86-9

By memorandum dated December 11, 1986, you requested advice from the Public Health Division whether the Indian Health Service (IHS), using its leasing authority in section 704 of the Indian Health Care Improvement Act (IHCIA), 25 U.S.C. § 1674, to lease real property from Indian tribes, may use no year funds appropriated to the IHS in the Omnibus Drug Supplemental Appropriations Act of 1987 for "Indian Health facilities", contained in the Joint Resolution Making Continuing Appropriations for Fiscal Year (FY) 1987, P.L. 99-591, to lease such facilities. These funds were part of the appropriations received by the IHS to carry out various responsibilities under the "Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986," (IA&SA Act), which is contained in the "Anti-Drug Abuse Act of 1986," P.L. 99-570, at Title IV, Subtitle C. Your question arises because section 4427(b) of the IA&SA Act only provides the Secretary with authority to "construct or renovate" a youth treatment center in each area under the jurisdiction of an IHS area office.

Your request was referred to this Division because we are primarily responsible for general legal questions relating to appropriations and facilities. During our review of this matter, IHS staff also asked us to consider whether the above-referenced appropriated funds may be used by the IHS to purchase an existing facility.

We understand that the IHS is interested in leasing and/or purchasing existing facilities for youth treatment centers because this approach would enable the IHS to begin this program expeditiously, without construction delays, in situations where adequate space is available for lease or purchase. The IHS also suggests that leasing is a more economical way to establish the 11 regional youth treatment centers mandated by law, since IHS estimates that construction of those facilities will cost \$32 million while only \$5.5 million was appropriated for FY 1987.

Our opinion, which has been coordinated with and concurred in by the Public Health Division, is that the IHS is authorized to use the IA&SA Act funds to construct new facilities, renovate existing IHS owned and leased facilities and renovate federally owned structures of other agencies, but that it may not use such funds to lease or purchase such facilities.

LEGAL ANALYSIS

IHS Authority Under The IA&SA Act

The IA&SA Act imposes certain responsibilities on the IHS regarding facilities. Section 4227 provides in pertinent part:

(b) CENTERS.--The Secretary shall construct or renovate a youth regional treatment center in each area under the jurisdiction of an Indian Health Service area office There are authorized to be appropriated \$6,000,000 for the construction and renovation of the regional youth treatment centers, and \$3,000,000 for the staffing of such centers, for each of the fiscal years 1987, 1988, and 1989. [Emphasis supplied.]

Section 4227(c) expands the renovation contemplated by section 4227(b) to non-DHHS facilities by providing that the IHS may use suitable "federally owned structures" for youth treatment centers under terms and conditions agreed upon with the federal agency having responsibility for the particular structure.

To ensure that the purposes of the IA&SA Act were not side-tracked by needlessly narrow readings of existing federal laws and regulations, the Congress, in section 4208, stated:

It is the intent of Congress that --

(1) specific Federal laws, and administrative regulations promulgated thereunder, establishing programs of the Bureau of Indian Affairs, the Indian Health Service, and other Federal agencies, and

(2) general Federal laws, including laws limiting augmentation of Federal appropriations or encouraging joint or cooperative funding,

shall be liberally construed and administered to achieve the purposes of this subtitle.

On its face, section 4227(b) of the IA&SA Act specifically authorizes only the construction of youth treatment centers and, we believe, the renovation of all existing IHS owned and leased facilities which could be used for that purpose. That section does not provide authority to acquire additional facilities by lease and purchase. Further, because the meaning of the terms "construct" and "renovate" are, in our opinion, clearly distinct from lease and purchase, we do not believe that section 4208 of the IA&SA Act, which encourages liberal interpretations of federal statutes to carry out its purposes, could reasonably be used to authorize leasing or purchasing.

We also reviewed the legislative history of the IA&SA Act available to us.¹ Only two Congressional Reports that are part of this legislative history mentioned the IHS's youth treatment facilities. House Report 99-733, Part I, 99th Cong., 2nd Sess., dated August 1, 1986, accompanying H.R. 1156, indicated that the bill provided IHS with authority to use and renovate existing federal facilities for drug and substance abuse treatment purposes and also provided that IHS should seek authority to construct new facilities, only if there is not an adequate number of federal facilities that may be renovated. House Report 99-792, 99th Cong., 2nd Sess., Part I, dated August 14, 1986, accompanying H.R. 5534, indicated that the bill only provided the IHS with authority to use and renovate federally owned structures for drug and substance abuse treatment facilities. The IHS's present authority for "construction and renovation" was not included in either of these earlier bills. It appears that the statutory authorities ultimately provided to the IHS to construct and renovate youth treatment centers was an expansion of the renovation authority provided in earlier versions of this legislation.

¹ We reviewed all of the legislative materials in the Department's law library and in the OGC Legislation Division's files. Unfortunately, these sources did not contain all of the Congressional Reports comprising the complete legislative history of the Anti-Drug Abuse Act, of which the IA&SA Act is but a small part. If the IHS is aware of any additional relevant legislative history that it feels we should review, please forward it to us.

IHS's appropriations for carrying out its responsibilities under the IA&SA Act, which are distinct from the IHS's regular appropriations, are contained in section 163 of the Joint Resolution Making Continuing Appropriations for Fiscal Year 1987, P.L. 99-591, under the heading "Omnibus Drug Supplemental Appropriations Act of 1987." This Appropriation Act provides "for an additional amount for Indian health facilities, \$5,500,000 to remain available until expended." The Appropriations Act is silent as to the specific manner by which IHS is to expend these funds. The Conference Report accompanying the Joint Resolution, however, House Report 99-1005, 99th Cong., 2nd Sess., printed in the Congressional Record of October 15, 1986 at p. H10904, explains that the "\$5,500,000 is provided for the construction of detoxification facilities for Indian youth."

This Appropriations Act language, when read together with its legislative history, only provides clear authority to use the subject appropriations for "construction" of such facilities. However, we believe that the Appropriations Act language, when read in conjunction with IHS's substantive authority under the IA&SA Act, would allow the IHS to "renovate" any of its facilities, or other federal facilities, for such purposes, as well. To attempt to go beyond construction and renovation, however, and use these appropriated funds to lease and purchase youth treatment centers, would, in our opinion, violate a fundamental rule of appropriations law that requires that appropriated funds be used solely for the purposes for which they were appropriated. 31 U.S.C. § 1301(a). Since there is no other legislative indication of another use for the funds, the language of this Appropriations Act, its legislative history and the IHS's substantive authority in the IA&SA Act must govern and the expenditure of the funds should be limited to construction and renovation.

IHS Leasing Authority

IHS is also asking whether its substantive leasing authority under section 704 of the IHCIA provides authority to use funds appropriated for the IA&SA Act to lease the youth treatment facilities required by the latter Act. IHS's leasing authority under IHCIA authorizes it to enter into leases with Indian tribes to lease real property for up to 20 years for purposes of carrying out that Act.² IHS's regular annual appropriation provides funds for IHCIA purposes, including monies for leasing,

² For purposes of this opinion, it is not necessary to interpret the extent of IHS's authority to enter into initial leases of permanent structures and whether the annual IHS Appropriations Act leasing limitations apply.

e.g., see IHS's FY 1987 Appropriations Act contained in section 124 of the Joint Resolution Making Continuing Appropriations for Fiscal Year 1987, P.L. 99-591.

Since the IHS has been appropriated funds specifically for leasing under the IHCIA, it is our opinion that any funds appropriated for IA&SA purposes may not properly be used for IHCIA leasing, even if they were otherwise generally available. Our opinion is based on the general rule of appropriations law that, if a specific appropriation exists for a particular item, that appropriation must be used and it is improper to charge a more general appropriation. 36 Comp. Gen. 526 (1957).

CONCLUSION

We conclude that the IA&SA Act and the appropriations to carry out its purposes authorize the IHS to construct and renovate youth treatment centers and that the IHS may chose to renovate any appropriate IHS facilities, including leased facilities, or other federal facilities.³ We do not believe, however, that the IA&SA Act authorizes the acquisition of such centers by lease or purchase and it is our opinion that IHCIA does not provide IHS with authority to lease these youth treatment centers using funds appropriated for the IA&SA Act.


Ronald B. Guttman

cc:
Joel Mangel, OGC
Duke McCloud, OGC

³ Of course, the Economy Act limitations on spending for alterations, improvements and repairs of rented premises apply to renovation of leased facilities. 40 U.S.C. § 278a.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary
Office of the General Counsel

MAY 12 1988

Public Health Division
Room 4A-53 Parklawn Bldg.
5600 Fishers Lane
Rockville, Maryland 20857
(301) 443-2644

NOTE TO RICH McCLOSKEY

Re: Senate Report language regarding renovation of
non-Federally owned facilities for alcohol and drug
abuse youth treatment centers

I note that the following language appears in the Senate
Appropriations Committee Report for FY 1988 (S. No. 100-165,
100 Cong. 1st Sess. at p. 113):

The Committee is further advised that
interpretations given to the provisions
of the Act by the Department's Office of
General Counsel are inconsistent with the
intent of the Congress. The Committee
has been advised that it is the intent of
the Congress that: (1) the expenditure
of construction and renovation funds
authorized by the Act may be used for
tribal facilities or non-federal
facilities leased by or from a tribe for
purposes authorized under the Act, in
addition to the use of such funds to
construct or renovate existing federal
facilities.

While this language may purport to interpret a prior
enacted statute, namely the Indian Alcohol and Substance
Abuse Prevention and Treatment Act of 1986, the committee is
merely noting that it has been advised what the intent of
Congress was. Even if the language could be construed as the
committee's view, this type of report language is entitled to
no weight in interpreting a prior enacted statute.
Consumer Product Safety Commission v. GTE Sylvania, Inc. 447
U.S. 102, 118-119, 100 S. Ct. 2051, 2061 (1980);
Cook Inlet Native Association v. Bowen, 810 F.2d 1471,
1475-76 (9th Cir. 1987).

Duke McCloud
Senior Attorney
Public Health Division

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AUG 15 1988

- 115 15
- : Les Morris (Sgt.) Leslie M. Morris
Division of Legislation and Regulations
 - : BIA Opinion on P.L. 99-590
 - : Peter M. Nakamura, M.D.
Acting Director, Portland Area IHS

We are in receipt of the July 5 DOI Regional Solicitors' opinion (Tab A) interpreting P.L. 99-570, which you sent to Dr. Rhoades on August 4.

Attached for your information is a copy of a May 18, 1987 legal opinion by this Department's Office of the General Council (Tab B) indicating that P.L. 99-570 funds may not be used to purchase facilities (See pg. 2 and conclusion).

Attachments

- Tab A - DOI Opinion
- Tab B - OGC Opinion

cc:

Duke McCloud, OGC/PHD
Ron Guttman, OGC/BAL
Bud Mason
Craig Vanderwagon

Tab A

CONTROL NUMBER	CORRESPONDENCE ID.	CORRESPONDENCE DATE	DUE DATE
M-81269	MEMO	0804	0000

FROM	STATE	TO	ERR
NAKAMURA, PETER			

SUBJECT	ATTACHMENTS
CONGRESSIONAL INQUIRY ON P.L. 99-570	

REFERRALS					REFERENCE NUMBER (1)	REFERENCE NUMBER (2)
ORG.	ACTION		ACTION		PHS TRACER NUMBER	O.S. CONTROL NUMBER
	REQUESTED	DATE	TAKEN	DATE		
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	1 <input type="checkbox"/> INTERIM SGD.
	5 <input type="checkbox"/> FINAL SGD.
	ACTION REQUESTED CODES:
	S - Signature D - Direct Reply C - Clearance
	M - Necessary Action I - Information
	ACTION TAKEN CODES:
	R - Cleared P - Prepared R - Returned S - Signed
	I - Interim O - Downgraded U - Upgraded
	INT. CONT. OFFICE

Memorandum

Date AUG 4 1988


From Acting Director
Portland Area Indian Health Service

Subject Congressional Inquiry on P.L. 99-570

To See Below

I have just received a copy of this letter addressed to the Portland Area Bureau of Indian Affairs which was sent to them by the Office of the Regional Solicitor, Pacific Northwest Region, Portland, Oregon.

I would be interested in your reaction to this information--thanks.


Peter M. Nakamura, M.D.

Attachment

Addressees:

Ernest J. Ishem, Assistant Regional Attorney, Region X, Seattle
Thomas L. Austin, D.M.D., Assistant Area Director, ICRS, Portland
John E. Mackey, Alcoholism & Substance Abuse Coordinator, Portland
Everett R. Rhoades, M.D., Director, Indian Health Service, Rockville
John Porvaznik, M.D., Assoc. Dir., Office of Health Programs, Rockville